IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 28 OF 1992

The State of Maharashtra ..Applicant.

V/s.

Pradeepkumar Bhukandas Shah & Ors. ..Respondents.

Shri K.V. Saste, APP for the Applicant.
Vrushali Raje for the Respondents.

CORAM : A.M.KHANWILKAR, J.
DATED : MARCH 22, 2005

PC :-

1. Heard counsel for the parties.

2. This petition takes exception to the judgement and order passed by the Metropolitan Magistrate, 6th Court, Mazgaon, Mumbai dated 16.07.1991 in C.C. No. 178/S/88, discharging the accused Nos. 1 to 4 from the offence punishable under section 18(c) read with condition No. 3(ii) of licence in Form No. 20B and Rule 65(18) read with section 18(a) (vi) of Drugs and Cosmotics Act, 1940 and Rules thereunder, punishable under section 27 of the said Act.

3. The alleged offence is stated to have taken place in the year 1987. The prosecution examined three witnesses and closed the prosecution evidence

before charge. The respondents accused preferred application for discharge on the ground that the evidence as has been adduced by the prosecution, does not indicate complicity of the accused, much less an offence as alleged. That aspect has been considered by the lower court, evaluating the relevant evidence on record. It has been noticed that in the cross-examination, PW-1 has admitted that he did not find accused Nos. 2 and 3 on the premises of accused No.4 at the relevant dates and he cannot say that they were present at the time of his third visit. The witness also admitted that the accused are the manufacturers and not the dealers in the drugs and the accused has licence to manufacture the said Diromet tablets. The witness then stated that it cannot be said that the Diromet Tablets concerned in the case were or were not meant for consumption or use by the Government of Maharashtra.

4. Besides the court below has noticed the infirmity in the prosecution case and the inability of the prosecution to examine relevant witnesses. The court has observed that in spite of giving sufficient opportunities to examine Bhaskar R. Joshi, no steps were taken to examine the said witness. Besides, the

court has observed that panchas M.B. Desai and D.T. Sawant are also not examined by the prosecution. It is also seen that another relevant witness, namely, P.S.I. Dagwar, who had conducted the raid, was also not examined. Suffice it to observe that, as there is material on record to show that the firm of the accused company holds a licence under the Drugs and Cosmetics Act and the seizure of the document is also not proved beyond reasonable doubt, as material witnesses are also not examined, the court below proceeded to discharge the accused on that reasoning. The view taken by the court below is supported by the evidence on record. It is a possible view and perhaps the correct approach adopted by the trial court. Besides, the offence in question has allegedly taken place in the year 1987 and the maximum sentence provided for is only two years. For this additional reason also no interference is warranted. If it is so, order of discharge ought to be passed as a necessary corollary in the fact situation of the present case.

5. In the circumstances, no cogent reason is forthcoming to exercise revisional jurisdiction in respect of the order under challenge before this

court. Hence, dismissed.

6. Ordered accordingly.

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